

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

OPTIMAL GOLF SOLUTIONS, INC.,	§	
GPS INDUSTRIES, INC. and	§	
OPTIMAL I.P. HOLDINGS, L.P.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:09-CV-1403-K
	§	
ALTEX CORPORATION, et al.,	§	
	§	
Defendants.	§	

ORDER

Before the Court is the Parties' Joint Report (Doc. No. 23) filed in accordance with the Court's order of August 18, 2009. In this joint report, the parties updated the Court on the current bankruptcy proceedings involving Plaintiff GPS Industries, Inc. ("GPS") and whether a stay was automatic under 11 U.S.C. § 362.

The Court agrees with both parties that an automatic stay under 11 U.S.C. § 362 is not implicated in this instance where the debtor is the plaintiff. *See Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204-05 (3rd Cir. 1991)(language of section 362 clear that only proceedings against a debtor are stayed). But the Court concludes that a stay in this case is advisable for at least two reasons. The ownership of patent '093, the patent at issue, is uncertain at this point in time. This issue, among others, is to be addressed by the bankruptcy court in the coming weeks, according to the parties. This issue must be clarified before the parties and this

Court can proceed in this case. In addition, Plaintiffs GPS and Optimal I.P. Holdings, L.P., appealed this Court's order dismissing the previous action, styled *GPS Industries, Inc. et al. v. Altex Corp., et al.*, 3:07-CV-0831-K, in which the Court dismissed the case without prejudice for lack of standing. That appeal is currently pending before the United States Court of Appeals for the Federal Circuit. To continue in this case, while the appeal is pending, would require all parties, as well as this Court, to waste both time and resources on the same case currently being considered on appeal before the Federal Circuit. Accordingly, this case is hereby **STAYED** until further notice. Deadlines for filing responsive pleadings are hereby **VACATED**.

SO ORDERED.

Signed September 30th, 2009.


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UNITED STATES DISTRICT JUDGE